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8                   **UNITED STATES DISTRICT COURT**  
9                   **WESTERN DISTRICT OF WASHINGTON**  
10                  **AT TACOMA**

11 DENNIS FLOKER,

CASE NO. C11-5047

12                  Plaintiff,

**ORDER DENYING LEAVE TO  
PROCEED *IN FORMA PAUPERIS*  
ON APPEAL**

13                  v.

14 KENNEY, L.L. FIGUEROA, et al.,

15                  Defendants.

16         This matter comes before the Court on referral from the Ninth Circuit Court of Appeals  
17 for the limited purpose of determining whether *in forma pauperis* status should continue for  
18 Plaintiff's appeal. Dkt. 90.

19         The Prison Litigation Reform Act of 1995 ("PLRA") obligates the Court to review notice  
20 of appeals filed by all persons proceeding IFP and by those, like Plaintiff, who are "incarcerated  
21 or detained in any facility [and] accused of, sentenced for, or adjudicated delinquent for,  
22 violations of criminal law or the terms or conditions of parole, probation, pretrial release, or  
23 diversionary program," "as soon as practicable after docketing." See 28 U.S.C. §§ 1915(e)(2)  
24 and 1915A(b). Under these provisions, the Court must *sua sponte* dismiss any IFP or prisoner

1 complaint, or any portion thereof, which is frivolous, malicious, fails to state a claim, or which  
2 seeks damages from defendants who are immune. See 28 U.S.C. §§ 1915(e)(2)(B); *Lopez v.*  
3 *Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000); *Resnick v. Hayes*, 213 F.3d 443, 446 (9th Cir.  
4 2000). To proceed on appeal *in forma pauperis*, 28 U.S.C. § 1915(a)(1) requires that a litigant's  
5 appeal not be frivolous. The litigant need not show probable success on the merits, but the appeal  
6 must involve legal points arguable on their merits and therefore not frivolous.

7 As indicated in the Order denying the motion for immediate injunctive relief for medical  
8 care evaluation, Plaintiff failed to submit any evidence that the decisions made by Defendants  
9 were medically unsound, let alone a manifestation of deliberate indifference to his medical  
10 needs. Dkt. 76 pp. 1-2. Accordingly, the appeal lacks an arguable basis in fact and/or law and  
11 the Court finds that an *in forma pauperis* appeal would not be taken in good faith pursuant to 28  
12 U.S.C. § 1915(a)(3).

13 ACCORDINGLY;

14 IT IS ORDERED:

15 Application to proceed *in forma pauperis* on appeal is **DENIED**.

16 Dated this 25th day of August, 2011.

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19 ROBERT J. BRYAN  
United States District Judge  
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